

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CENTRAL DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ENRIQUE ARAGON-HERNANDEZ
and EDUARDO TEJEDA-CADENA,

Defendants.

No. CR 06-3061-MWB

**INSTRUCTIONS
TO THE JURY**

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VERDICT FORM

INSTRUCTION NO. 1 - INTRODUCTION

Members of the jury, I am giving you these Instructions to help you better understand the trial and your role in it and to instruct you on the law that you must apply in this case. Consider these instructions, together with all written and oral instructions given to you during or at the end of the trial, and apply them as a whole to the facts of the case. In considering these instructions, the order in which they are given is not important.

As Chief Magistrate Judge Zoss explained during jury selection, in an Indictment, a Grand Jury charges these defendants with the following offenses: “conspiracy to distribute methamphetamine” in **Count 1**; “distribution of methamphetamine” in **Counts 2 and 3**; and “possession of a firearm in furtherance of a drug-trafficking crime” in **Count 4**. As Chief Magistrate Judge Zoss also explained during jury selection, an Indictment is simply an accusation. It is not evidence of anything. Each defendant has pled not guilty to the crimes charged against him and is presumed to be innocent of each offense unless and until the prosecution proves his guilt on that offense beyond a reasonable doubt.

Your duty is to decide from the evidence whether each defendant is not guilty or guilty of each charge against him. You will find the facts from the evidence. You are the sole judges of the facts; but you must follow the law as stated in these instructions, whether you agree with it or not.

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, based solely on the evidence, your common sense, and the law

as stated in these instructions. Do not take anything that I have done during jury selection or that I may say or do during the trial as indicating what I think of the evidence or what I think your verdict should be. Similarly, do not conclude from any ruling or other comment that I have made or may make that I have any opinions on how you should decide the case.

Please remember that only defendants Enrique Aragon-Hernandez and Eduardo Tejeda-Cadena, not anyone else, are on trial here. Also, remember that these defendants are on trial *only* for the offenses charged against them in the Indictment, not for anything else.

Each defendant is entitled to be treated separately and to have the evidence on each charge against him considered separately. *Therefore, you must return a separate, unanimous verdict on each offense charged against each defendant.*

INSTRUCTION NO. 2 - PRELIMINARY MATTERS

Before I turn to specific instructions on the offenses charged in this case, I must explain some preliminary matters.

“Elements”

The offenses charged in this case each consist of “elements,” which the prosecution must prove beyond a reasonable doubt against a defendant charged with that offense in order to convict that defendant of that offense. I will summarize in the following instructions the elements of the offenses with which the defendants are charged.

Timing

The Indictment alleges that the offenses charged were committed “from” one date “through” another date or “on or about” a specific date. The prosecution does not have to prove with certainty the exact date of an offense charged. It is sufficient if the evidence establishes that an offense occurred within a reasonable time of the date or time period alleged for that offense in the Indictment.

Controlled substances

In these instructions, when I refer to a “controlled substance,” I mean any drug or narcotic that is regulated by federal law. Methamphetamine is a “controlled substance.” In these instructions, I will refer to “a mixture or substance containing a detectable amount of methamphetamine” simply as “a methamphetamine mixture.”

“Intent” and “Knowledge”

The elements of the charged offenses may require proof of what a defendant “intended” or “knew.” Where what a defendant “intended” or “knew” is an element of an offense, that defendant’s “intent” or “knowledge” must be proved beyond a reasonable doubt. “Intent” and “knowledge” are mental states. It is seldom, if ever, possible to determine directly the operations of the human mind. Nevertheless, “intent” and “knowledge” may be proved like anything else, from reasonable inferences and deductions drawn from the facts proved by the evidence.

An act was done “knowingly” if the defendant in question was aware of the act and did not act through ignorance, mistake, or accident. The prosecution is not required to prove that a defendant knew that his acts or omissions were unlawful. An act was done “intentionally” if it was done voluntarily, without coercion, and not because of ignorance, mistake, accident, or inadvertence.

“Possession,” “Distribution,” and “Delivery”

Some of the offenses charged in this case allegedly involved “distribution” of methamphetamine. “Distribution,” in turn, involves “delivery” or transfer of “possession.” Similarly, the “firearm” offense allegedly involved “possession” of firearm. The following definitions of “possession,” “distribution,” and “delivery” apply in these instructions:

The law recognizes several kinds of “possession.” A person who knowingly had direct physical control over an item, at a given time, was then in “actual possession” of it. A person who, although not in actual possession, had both the power and the intention at a given time to exercise control over an item, either

directly or through another person or persons, was then in “constructive possession” of it. If one person alone had actual or constructive possession of an item, possession was “sole.” If two or more persons shared actual or constructive possession of an item, possession was “joint.” Whenever the word “possession” is used in these instructions, it includes “actual” as well as “constructive” possession and also “sole” as well as “joint” possession.

The term “distribute” means to deliver a controlled substance to the actual or constructive possession of another person. The term “deliver” means the actual, constructive, or attempted transfer of a controlled substance to the actual or constructive possession of another person. It is not necessary that money or anything of value changed hands. The law prohibits “conspiracy to distribute” a controlled substance and “distribution” of a controlled substance; the prosecution does not have to prove that there was or was intended to be a “sale” of a controlled substance to prove a conspiracy to distribute that controlled substance or distribution of that controlled substance.

* * *

I will now give you more specific instructions about the offenses charged in the Indictment.

INSTRUCTION NO. 3 - COUNT 1: CONSPIRACY

Count 1 of the Indictment charges that, from January 2005 through about August 18, 2006, defendants Aragon-Hernandez and Tejeda-Cadena knowingly conspired with each other and with other persons, known and unknown to the Grand Jury, to distribute 500 grams or more of a methamphetamine mixture. The defendants deny that they committed this offense.

For you to find a particular defendant guilty of this “conspiracy” offense, the prosecution must prove beyond a reasonable doubt *all* of the following essential elements against that defendant:

***One*, between January 2005 and about August 18, 2006, two or more persons reached an agreement or came to an understanding to distribute methamphetamine.**

The prosecution must prove that the defendant in question reached an agreement or understanding with at least one other person. The other person or persons do not have to be defendants, or named in the Indictment, or otherwise charged with a crime. There is no requirement that any other conspirators be named as long as you find beyond a reasonable doubt that there was at least one other co-conspirator besides the defendant in question.

The “agreement or understanding” need not have been an express or formal agreement or have been in writing or have covered all the details of how it was to be carried out. Nor is it necessary that the members had directly stated between themselves the details or purpose of the scheme. In determining whether the alleged agreement existed, you may consider the actions and

statements of all of the alleged participants, whether they are charged as defendants or not. The agreement may be inferred from all of the circumstances and the conduct of the alleged participants.

The Indictment alleges that the conspirators agreed to distribute 500 grams or more of a methamphetamine mixture. The distribution of methamphetamine is called the “objective” of the conspiracy. To assist you in determining whether there was an agreement to commit the offense identified as an objective of the conspiracy, you should consider the elements of that offense. The elements of a “*distribution offense*” are the following: (1) on or about the date alleged, a person intentionally distributed a controlled substance to another; and (2) at the time of the distribution, the person knew that what he or she was distributing was a controlled substance.

Keep in mind, however, that to prove the “conspiracy” offense, the prosecution must prove that there was an *agreement* to commit the objective alleged. The prosecution is *not* required to prove that the objective *was actually committed*. In other words, the question is whether the defendant *agreed* to distribute methamphetamine, not whether the defendant or someone else *actually committed* such a “distribution” offense.

If there was no agreement, there was no conspiracy. Similarly, if you find that there was an agreement, but you find that the defendant in question did not join in that agreement, or did not know the purpose of the agreement, then you cannot find that defendant guilty of the “conspiracy” charge.

Two, the defendant in question voluntarily and intentionally joined in the agreement or understanding, either at the time it was first reached or at some later time while it was still in effect.

You should understand that evidence that a person was merely present at the scene of an event, or merely acted in the same way as others, or merely associated with others does not prove that the person joined in an agreement or understanding. A person who had no knowledge of a conspiracy, but who happened to act in a way that advanced some purpose of one, did not thereby become a member. Similarly, a defendant's mere knowledge of the existence of a conspiracy, or mere knowledge that an objective of the conspiracy was being contemplated or attempted, is not enough to prove that defendant joined in the conspiracy; rather, the prosecution must establish that there was some degree of knowing involvement and cooperation by the defendant in question.

On the other hand, a person may have joined in an agreement or understanding, as required by this element, without knowing all the details of the agreement or understanding, and without knowing who all the other members were. Further, it is not necessary that a person agreed to play any particular part in carrying out the agreement or understanding. A person may have become a member of a conspiracy even if that person agreed to play only a minor part in the conspiracy, as long as that person had an understanding of the unlawful nature of the plan and voluntarily and intentionally joined in it.

In deciding whether a particular defendant voluntarily and intentionally joined in the agreement, you must consider only evidence of his own actions and statements. You may not consider actions and pretrial statements of others, except to the extent that pretrial

statements of others describe something that the defendant in question said or did.

Three, at the time that the defendant in question joined in the agreement or understanding, he knew the purpose of the agreement or understanding.

The defendant in question must have known of the existence and purpose of the conspiracy. Without such knowledge, a defendant cannot be guilty of conspiracy, even if his acts furthered the conspiracy. You may not find that the defendant in question knew the purpose of the agreement or understanding if you find that he was simply careless. A showing of negligence, mistake, or carelessness is not sufficient to support a finding that a particular defendant knew the purpose of the agreement or understanding.

If the prosecution fails to prove these elements beyond a reasonable doubt as to a particular defendant, then you must find that defendant not guilty of the “conspiracy” offense charged in **Count 1** of the Indictment.

In addition, if you find a particular defendant guilty of this “conspiracy” offense, then you must also determine beyond a reasonable doubt the quantity of any methamphetamine mixture actually involved in the conspiracy for which that defendant can be held responsible, as explained in Instruction No. 5.

INSTRUCTION NO. 4 - COUNTS 2 AND 3: DISTRIBUTION OF METHAMPHETAMINE

Counts 2 and 3 of the Indictment charge two separate “distribution” offenses allegedly involving the distribution of a methamphetamine mixture on two different dates. More specifically, **Count 2** charges that, on or about August 17, 2006, defendants Aragon-Hernandez and Tejeda-Cadena knowingly or intentionally distributed or aided and abetted another in the distribution of 50 grams or more of a methamphetamine mixture. **Count 3** charges that, on or about August 7, 2006, defendants Aragon-Hernandez and Tejeda-Cadena knowingly and intentionally distributed or aided and abetted another in the distribution of 50 grams or more of a methamphetamine mixture. The defendants deny that they committed either of these “distribution” offenses.

The Indictment charges that the “distribution” offenses were committed in either of two different ways: personally committing the offense and aiding and abetting the offense. I will now explain the elements of these two alternatives.

Personal commission alternative

The Indictment charges, as the first alternative, that the defendants personally committed the charged “distribution” offenses. For you to find a particular defendant guilty of a particular “distribution” offense on this “personal commission” alternative, the prosecution must prove beyond a reasonable doubt *both* of the following essential elements:

One, on or about the date alleged in the Count in question, the defendant in question intentionally distributed a methamphetamine mixture to another.

You must ascertain whether or not the substance in question was, in fact, a methamphetamine mixture. In so doing, you may consider all of the evidence in the case that may aid in the determination of that issue.

Two, at the time of the distribution, the defendant in question knew that what he was distributing was a controlled substance.

The defendant in question need not have known what the controlled substance was, if he knew that he had possession of some controlled substance.

If the prosecution fails to prove these elements beyond a reasonable doubt as to a particular defendant on a particular “distribution” offense, then you must find that defendant not guilty of “personal committing” that “distribution” offense.

Aiding and abetting alternative

The Indictment charges, as the second alternative, that the defendants aided and abetted another in the commission of the charged “distribution” offenses. A person may be found guilty of an offense, even if that person did not personally do every act constituting that offense, if that person “aided and abetted” the commission of the offense.

For you to find a particular defendant guilty of a particular “distribution” offense on this “aiding and abetting” alternative, the prosecution must prove beyond a reasonable doubt *all* of the following essential elements:

One, on or about the date alleged in the Count in question, some person or persons distributed a methamphetamine mixture to another.

The prosecution must first prove beyond a reasonable doubt that both of the essential elements of “personally committing” the distribution of a methamphetamine mixture, as explained above, were committed by some person or persons on or about the date alleged in the Count in question. It is not necessary that the other person or persons be convicted or even identified.

Two, the defendant in question knew that the distribution of a methamphetamine mixture was being committed or was going to be committed on the date in question.

The aider and abettor must have known that what was being distributed or going to be distributed was a controlled substance. The aider and abettor need not have known what the controlled substance was, if he knew that the person personally committing the offense was distributing or was going to distribute some controlled substance.

Three, the defendant in question knowingly acted in some way for the purpose of causing, encouraging, or aiding the distribution of the methamphetamine mixture.

You should understand that evidence that a person was merely present at the scene of an event, or merely acted in the same way as others, or merely associated with others does not prove that the person voluntarily aided and abetted the commission of an offense. A person who had no knowledge that a crime was being committed or was

going to be committed, but who happened to act in a way that advanced some purpose of that crime, did not thereby become criminally liable for that offense. Also, a person could not have “aided and abetted” the distribution of a methamphetamine mixture unless that person intended that some or all of the controlled substance would be distributed to another person.

If the prosecution fails to prove these elements beyond a reasonable doubt as to a particular defendant on a particular “distribution” offense, then you must find that defendant not guilty of “aiding and abetting” that “distribution” offense.

Quantity of methamphetamine

In addition, if you find a particular defendant guilty of a “distribution” offense, under either a “personal commission” or an “aiding and abetting” alternative, then you must also determine beyond a reasonable doubt the quantity of any methamphetamine mixture actually involved in that offense for which that defendant can be held responsible, as explained in Instruction No. 5.

INSTRUCTION NO. 5 - QUANTITY OF CONTROLLED SUBSTANCES

The offenses charged in the Indictment allegedly involved various quantities of a methamphetamine mixture. Where a specific quantity of a methamphetamine mixture is charged, the prosecution does not have to prove that the offense involved the amount or quantity of the methamphetamine mixture alleged in the Indictment. However, *if* you find a particular defendant guilty of an offense charged in **Count 1**, **Count 2**, or **Count 3**, *then* for such an offense you must determine the following matters *beyond a reasonable doubt*: (1) whether that offense actually involved a methamphetamine mixture as alleged; and (2) the *total quantity*, in grams, of any methamphetamine mixture involved in that offense for which that defendant can be held responsible.

In making the required determinations of quantity of controlled substances for **Counts 1, 2, and 3**, you may consider all of the evidence in the case that may aid in the determination of these issues.

Responsibility

A defendant guilty of *conspiracy to distribute* a methamphetamine mixture, as charged in **Count 1**, is responsible for the quantities of any methamphetamine mixture that he actually distributed or agreed to distribute. Such a defendant is also responsible for those quantities of any methamphetamine mixture that fellow conspirators distributed or agreed to distribute, if you find that the defendant could have reasonably foreseen, at the time that he joined the conspiracy or while the

conspiracy lasted, that those prohibited acts were a necessary or natural consequence of the conspiracy. Controlled substances acquired for personal use should be included when determining the drug quantity for a “conspiracy” offense.

A defendant guilty of *distribution* of a methamphetamine mixture, as charged in **Counts 2** and **3** of the Indictment, is responsible for the quantities of any methamphetamine mixture that he actually distributed, as “distribution” is explained in Instruction No. 2.

Determination of quantity and verdict

If you find a particular defendant guilty of **Count 1**, **Count 2**, or **Count 3**, then you must determine beyond a reasonable doubt the *total quantity*, in *grams*, of any methamphetamine mixture involved in the offense in question for which you find that the defendant can be held responsible. You must then indicate in the Verdict Form the *range* within which that *total quantity* falls.

Thus, if you find a defendant guilty of the “conspiracy” charge in **Count 1**, and that the offense involved a methamphetamine mixture, then you must determine beyond a reasonable doubt whether that defendant can be held responsible for 500 grams or more, 50 grams or more but less than 500 grams, or less than 50 grams of a methamphetamine mixture. Similarly, if you find the defendant guilty of a “distribution” charge in **Count 2** or **Count 3**, then you must determine beyond a reasonable doubt whether that defendant can be held responsible for 50 grams or more, or less than 50 grams of a methamphetamine mixture.

You may find more or less than the charged quantity of any methamphetamine mixture for any offense, but you must find that the quantity you indicate in the

Verdict Form has been proved beyond a reasonable doubt as the quantity for which the defendant in question can be held responsible on that offense.

In making your determination of quantity as required, it may be helpful to remember that one pound is approximately equal to 453.6 grams, and that one ounce is approximately equal to 28.34 grams.

**INSTRUCTION NO. 6 - COUNT 4: POSSESSION OF A FIREARM
IN FURTHERANCE OF A DRUG-TRAFFICKING CRIME**

Count 4 of the Indictment charges that, on or about August 17, 2006, defendant Aragon-Hernandez possessed a firearm, that is, a Bersa .380 caliber handgun, serial #683069, in furtherance of the drug-trafficking conspiracy offense charged in Count 1 of the Indictment. Defendant Aragon-Hernandez denies that he committed the offense of “possession of a firearm in furtherance of a drug-trafficking crime.”

For you to find defendant Aragon-Hernandez guilty of this offense, the government must prove *both* of the following essential elements beyond a reasonable doubt:

***One*, on or about August 17, 2006, the defendant committed the “conspiracy” offense charged in Count 1 of the Indictment.**

If you find defendant Aragon-Hernandez not guilty of the “conspiracy” offense charged in **Count 1**, then you cannot find him guilty of this “firearm” offense.

***Two*, the defendant knowingly possessed a firearm in furtherance of that drug-trafficking conspiracy.**

This offense allegedly involved possession of a Bersa .380 caliber handgun, serial #683069. The defendant must have “knowingly possessed” this firearm. “Knowledge” and “possession” were both defined for you in Instruction No. 2.

The defendant must have possessed the firearm “in furtherance” of the “conspiracy” offense charged in

Count 1. “Furtherance” should be given its plain meaning, which is “the act of furthering, advancing, or helping forward.” Thus, to prove that the defendant “possessed a firearm in furtherance of the drug-trafficking conspiracy,” it is not enough for the prosecution to prove that the defendant simultaneously distributed a methamphetamine mixture and possessed a firearm or that he possessed the firearm at the time that he conspired to distribute a methamphetamine mixture. Instead, the prosecution must prove a connection between the defendant’s possession of the firearm and the underlying drug-trafficking conspiracy.

Therefore, in order to prove this element, the prosecution must prove beyond a reasonable doubt that the defendant possessed the firearm alleged and that the firearm had some purpose or effect with respect to the drug-trafficking conspiracy. The presence and involvement of the firearm cannot just be the result of accident or coincidence. The firearm must have facilitated the drug-trafficking conspiracy. For example, the handy availability of a firearm near drugs, drug paraphernalia, or drug money may support an inference that the defendant possessed the firearm at the ready to protect the drugs, the drug money, or the defendant during a drug transaction, such that the firearm facilitated the drug-trafficking conspiracy.

If the prosecution fails to prove these elements beyond a reasonable doubt as to defendant Aragon-Hernandez, then you must find him not guilty of the offense of “possession of a firearm in furtherance of a drug-trafficking crime,” as charged in **Count 4** of the Indictment.

INSTRUCTION NO. 7 - PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF

Each defendant is presumed innocent and, therefore, not guilty. This presumption of innocence requires you to put aside all suspicion that might arise from a defendant's arrest or charge or the fact that he is here in court. The presumption of innocence remains with the defendants throughout the trial. That presumption alone is sufficient to find a defendant not guilty. The presumption of innocence may be overcome as to a particular charge against a particular defendant only if the prosecution proves, beyond a reasonable doubt, *all* of the elements of the offense in question against that defendant.

The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to a defendant to prove his innocence. Therefore, the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. A defendant is not even obligated to produce any evidence by cross-examining the witnesses who are called to testify by the prosecution. Similarly, if a defendant does not testify, you must not consider that fact in any way, or even discuss it, in arriving at your verdict.

Unless the prosecution proves beyond a reasonable doubt that a defendant has committed each and every element of an offense charged against him, you must find that defendant not guilty of that offense.

INSTRUCTION NO. 8 - REASONABLE DOUBT

I have previously instructed you that, for you to find a particular defendant guilty of a charged offense, the prosecution must prove the elements of that offense “beyond a reasonable doubt” as to that defendant. A reasonable doubt may arise from the evidence produced by either the prosecution or a defendant, keeping in mind that no defendant ever has the burden or duty of calling any witnesses or producing any evidence. A reasonable doubt may also arise from the prosecution’s lack of evidence. A reasonable doubt is a doubt based upon reason and common sense. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the more serious and important transactions of life. On the other hand, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

INSTRUCTION NO. 9 - DEFINITION OF EVIDENCE

Your verdict must be based only on the evidence presented in this case and these and any other instructions that may be given to you during the trial. Evidence is:

1. Testimony.
2. Exhibits that are admitted into evidence.
3. Stipulations, which are agreements between the parties.

Evidence may be “direct” or “circumstantial.” The law makes no distinction between the weight to be given to direct and circumstantial evidence. The weight to be given any evidence is for you to decide.

A particular item of evidence is sometimes admitted only for a limited purpose, and not for any other purpose. I will tell you if that happens, and instruct you on the purposes for which the item can and cannot be used.

The fact that an exhibit may be shown to you does not mean that you must rely on it more than you rely on other evidence.

The following are not evidence:

1. Statements, arguments, questions, and comments by the lawyers.
2. Objections and rulings on objections.
3. Testimony that I tell you to disregard.
4. Anything you saw or heard about this case outside the courtroom.

The weight of the evidence is not determined merely by the number of witnesses testifying as to the existence or non-existence of any fact. Also, the

weight of the evidence is not determined merely by the number or volume of documents or exhibits. The weight of the evidence depends upon its quality, which means how convincing it is, and not merely upon its quantity. For example, you may choose to believe the testimony of one witness, if you find that witness to be convincing, even if a number of other witnesses contradict the witness's testimony. The quality and weight of the evidence are for you to decide.

INSTRUCTION NO. 10 - CREDIBILITY AND IMPEACHMENT

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness says, only part of it, or none of it.

In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the witness's drug or alcohol use or addiction, if any, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any evidence that you believe. In deciding whether or not to believe a witness, keep in mind that people sometimes see or hear things differently and sometimes forget things. You need to consider, therefore, whether a contradiction results from an innocent misrecollection or sincere lapse of memory, or instead from an intentional falsehood or pretended lapse of memory.

If a defendant testifies, you should judge his testimony in the same manner in which you judge the testimony of any other witness.

Ordinarily, witnesses may only testify to factual matters within their personal knowledge. However, you may hear evidence from persons described as experts. Persons may become qualified as experts in some field by knowledge, skill, training, education, or experience. Such experts may state their opinions on matters in that field and may also state the reasons for their opinions. You should consider

expert testimony just like any other testimony. You may believe all of what an expert says, only part of it, or none of it, considering the expert's qualifications, the soundness of the reasons given for the opinion, the acceptability of the methods used, any reason the expert may be biased, and all of the other evidence in the case.

Just because a witness works in law enforcement or is employed by the government does not mean you should give more weight or credence to such a witness's testimony than you give to any other witness's testimony.

A witness may be discredited or impeached by contradictory evidence; by a showing that the witness testified falsely concerning a material matter; or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness's present testimony. If earlier statements of a witness are admitted into evidence, they will not be admitted to prove that the contents of those statements were true. Instead, you may consider those earlier statements only to determine whether you think they are consistent or inconsistent with the trial testimony of the witness and, therefore, whether they affect the credibility of that witness.

You may hear evidence that some witnesses have each been convicted of a crime. You may use that evidence only to help you decide whether or not to believe these witnesses and how much weight to give their testimony.

You should treat the testimony of certain witnesses with greater caution and care than that of other witnesses:

1. You may hear evidence that certain witnesses are testifying pursuant to plea agreements and hope to receive reductions in their sentences

in return for their cooperation with the government in this case. If the prosecutor handling such a witness's case believes that the witness has provided "substantial assistance," the prosecutor can file a motion to reduce the witness's sentence. The judge has no power to reduce a sentence for such a witness for substantial assistance unless the U.S. Attorney files a motion requesting such a reduction. If the motion for reduction of sentence for substantial assistance is filed by the U.S. Attorney, then it is up to the judge to decide whether to reduce the sentence of that witness at all, and if so, how much to reduce it. You may give the testimony of such witnesses such weight as you think it deserves. Whether or not testimony of a witness may have been influenced by the witness's hope of receiving a reduction in sentence is for you to decide.

2. You may also hear evidence from certain witnesses that they participated in the crime charged in this case. You may give the testimony of such a witness such weight as you think it deserves. Whether or not the testimony of such a witness may be influenced by his or her desire to please the government or to strike a good bargain with the government about the witness's own situation is for you to determine.

* * *

If you believe that a witness has been discredited or impeached, it is your exclusive right to give that witness's testimony whatever weight you think it deserves.

INSTRUCTION NO. 11 - BENCH CONFERENCES AND RECESSES

During the trial it may be necessary for me to talk with the lawyers out of your hearing, either by having a bench conference here while you are present in the courtroom, or by calling a recess. Please be patient, because while you are waiting, we are working. The purpose of these conferences is to decide how certain evidence is to be treated under the rules of evidence, to avoid confusion and error, and to save your valuable time. We will, of course, do what we can to keep the number and length of these conferences to a minimum.

INSTRUCTION NO. 12 - OBJECTIONS

The lawyers may make objections and motions during the trial that I must rule upon. If I sustain an objection to a question before it is answered, do not draw any inferences or conclusions from the question itself. Also, the lawyers have a duty to object to testimony or other evidence that they believe is not properly admissible. Do not hold it against a lawyer or the party the lawyer represents because the lawyer has made objections.

INSTRUCTION NO. 13 - NOTE-TAKING

If you want to take notes during the trial, you may, but be sure that your note-taking does not interfere with listening to and considering all the evidence. If you choose not to take notes, remember it is your own individual responsibility to listen carefully to the evidence.

Notes you take during the trial are not necessarily more reliable than your memory or another juror's memory. Therefore, you should not be overly influenced by the notes.

If you take notes, do not discuss them with anyone before you begin your deliberations. At the end of each day, please leave your notes on your chair. At the end of the trial, you may take your notes out of the notebook and keep them, or leave them, and we will destroy them. No one will read the notes, either during or after the trial.

You will notice that we have an official court reporter making a record of the trial. However, we will not have typewritten transcripts of this record available for your use in reaching your verdict.

INSTRUCTION NO. 14 - CONDUCT OF THE JURY DURING TRIAL

You must decide this case based *solely* on the evidence presented in court, in light of your own observations, experiences, reason, and common sense. Therefore, to insure fairness, you, as jurors, must obey the following rules:

First, do not talk among yourselves about this case, or about anyone involved with it, until the end of the case when you go to the jury room to decide on your verdict.

Second, do not talk with anyone else about this case or about anyone involved with it until the trial has ended and you have been discharged as jurors.

Third, when you are outside the courtroom do not let anyone tell you anything about the case, or about anyone involved with it, or about any news story, rumor, or gossip about this case, or ask you about your participation in this case until the trial has ended and your verdict has been accepted by me. If someone should try to talk to you about the case during the trial, please report it to me.

Fourth, during the trial you should not talk with or speak to any of the parties, lawyers, or witnesses involved in this case—you should not even pass the time of day with any of them. It is important that you not only do justice in this case, but that you also give the appearance of doing justice. If a person from one side of the case sees you talking to a person from the other side—even if it is simply to pass the time of day—an unwarranted and unnecessary suspicion about your fairness might be aroused. If any lawyer, party, or witness does not speak to you when you pass

in the hall, ride the elevator or the like, it is because they are not supposed to talk or visit with you.

Fifth, do not read any news stories or articles about the case, or about anyone involved with it, or listen to any radio or television reports about the case or about anyone involved with it, or let anyone tell you anything about any such news reports. If you want, you can have your spouse or a friend clip out any stories and set them aside to give you after the trial is over. I can assure you, however, that by the time you have heard the evidence in this case you will know more about the matter than anyone will learn through the news media.

Sixth, do not do any research—on the Internet, in libraries, in the newspapers, or in any other way—or make any investigation *about this case* on your own.

Seventh, do not make up your mind during the trial about what the verdict should be. Do not discuss this case with anyone, not even with other jurors, until I send you to the jury room for deliberations after closing arguments. Keep an open mind until after you have gone to the jury room to decide the case and you and your fellow jurors have discussed the evidence.

Eighth, if at anytime during the trial you have a problem that you would like to bring to my attention, or if you feel ill or need to go to the restroom, please send a note to the Court Security Officer, who will deliver it to me. I want you to be comfortable, so please do not hesitate to inform me of any problem.

INSTRUCTION NO. 15 - DUTY TO DELIBERATE

A verdict must represent the considered judgment of each juror. *Your verdict on each charge against each defendant must be unanimous.* It is your duty to consult with one another and to deliberate with a view to reaching agreement if you can do so without violence to your individual judgment. Of course, you must not surrender your honest convictions as to the weight or effect of the evidence solely because of the opinions of other jurors or for the mere purpose of returning a verdict. Each of you must decide the case for yourself; but you should do so only after consideration of the evidence with your fellow jurors.

In the course of your deliberations you should not hesitate to re-examine your own views, and to change your opinion if you are convinced that it is wrong. To bring twelve minds to an unanimous result, you must examine the questions submitted to you openly and frankly, with proper regard for the opinions of others and with a willingness to re-examine your own views.

Remember that if, in your individual judgment, the evidence fails to establish a particular defendant's guilt beyond a reasonable doubt on an offense charged against him, then he should have your vote for a not guilty verdict on that offense. If all of you reach the same conclusion, then the verdict of the jury must be not guilty for the defendant on that offense. Of course, the opposite also applies. If, in your individual judgment, the evidence establishes a particular defendant's guilt beyond a reasonable doubt on an offense, then your vote should be for a verdict of guilty against that defendant on that charge, and if all of you reach that conclusion,

then the verdict of the jury must be guilty for that defendant on that offense. As I instructed you earlier, the burden is upon the prosecution to prove beyond a reasonable doubt every essential element of an offense charged against a defendant, or you cannot find that defendant guilty of that offense.

Remember, also, that the question before you can never be whether the government wins or loses the case. The government, as well as society, always wins, regardless of whether your verdict is not guilty or guilty, when justice is done.

Finally, remember that you are not partisans; you are judges—judges of the facts. Your sole interest is to seek the truth from the evidence. You are the judges of the credibility of the witnesses and the weight of the evidence.

You may conduct your deliberations as you choose. However, I suggest that you carefully consider all of the evidence bearing upon the questions before you. You may take all the time that you feel is necessary.

There is no reason to think that another trial would be tried in a better way or that a more conscientious, impartial, or competent jury would be selected to hear it. Any future jury must be selected in the same manner and from the same source as you. If you should fail to agree on a verdict, the case is left open and must be disposed of at some later time.

INSTRUCTION NO. 16 - DUTY DURING DELIBERATIONS

There are certain rules you must follow while conducting your deliberations and returning your verdict:

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, if a particular defendant is guilty, the sentence to be imposed is my responsibility. You may not consider punishment of any defendant in any way in deciding whether the prosecution has proved its case against him beyond a reasonable doubt.

Third, if you need to communicate with me during your deliberations, you may send a note to me through the Court Security Officer, signed by one or more jurors. I will respond as soon as possible, either in writing or orally in open court. *Remember that you should not tell anyone—including me—how your votes stand numerically.*

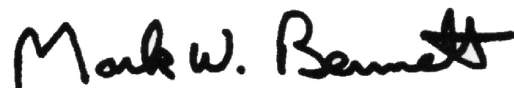
Fourth, your verdict must be based solely on the evidence and on the law in these instructions. Therefore, you must return a separate, unanimous verdict on each charge against the defendant. Nothing I have said or done is intended to suggest what your verdict should be—that is entirely for you to decide.

Fifth, in your consideration of whether a particular defendant is not guilty or guilty of an offense charged, you must not consider that defendant's race, color, religious beliefs, national origin, or sex. You are not to return a verdict for or

against a particular defendant on any charge unless you would return the same verdict for that charge without regard to that defendant's race, color, religious beliefs, national origin, or sex. To emphasize the importance of this consideration, the verdict form contains a certification statement. Each of you should carefully read the statement, then sign your name in the appropriate place in the signature block, if the statement accurately reflects the manner in which each of you reached your decision.

Finally, I am giving you the verdict form. A verdict form is simply the written notice of the decision that you reach in this case. You will take the verdict form to the jury room. When you have reached a unanimous verdict, your foreperson must complete one copy of the verdict form and all of you must sign that copy to record your individual agreement with the verdict and to show that it is unanimous. The foreperson must bring the signed verdict form to the courtroom when it is time to announce your verdict. When you have reached a verdict, the foreperson will advise the Court Security Officer that you are ready to return to the courtroom.

DATED this 10th day of April, 2007.

A handwritten signature in black ink that reads "Mark W. Bennett". The signature is written in a cursive style with a horizontal line extending from the end of the name.

MARK W. BENNETT
U. S. DISTRICT COURT JUDGE
NORTHERN DISTRICT OF IOWA

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CENTRAL DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ENRIQUE ARAGON-HERNANDEZ
and EDUARDO TEJEDA-CADENA,

Defendants.

No. CR 06-3061-MWB

VERDICT FORM

I. ENRIQUE ARAGON-HERNANDEZ

As to defendant Enrique Aragon-Hernandez, we, the Jury, unanimously find as follows:

COUNT 1: CONSPIRACY		VERDICT
Step 1: Verdict	On the “conspiracy” offense, as charged in Count 1 of the Indictment and explained in Instruction No. 3, please mark your verdict.	____ Not Guilty ____ Guilty
Step 2: Quantity of methamphetamine mixture	<i>If you found the defendant “guilty” of the “drug conspiracy” charge in Count 1, please indicate the quantity of methamphetamine mixture involved in the offense for which the defendant can be held responsible. (Quantity of controlled substances is explained in Instruction No. 5.)</i>	
	____ 500 grams or more ____ 50 grams or more, but less than 500 grams ____ less than 50 grams	

COUNT 2: DISTRIBUTION		VERDICT
Step 1: Verdict	On the charge of “distribution of methamphetamine” on or about August 17, 2006, as charged in Count 2 of the Indictment and explained in Instruction No. 4, please mark your verdict.	<input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty
Step 2: Alternative	If you found the defendant guilty of this offense, do you find him guilty of “personally committing” the offense or “aiding and abetting” the offense?	
	<input type="checkbox"/> “personally committing” the offense	<input type="checkbox"/> “aiding and abetting” the offense
Step 3: Quantity of methamphetamine mixture	If you found the defendant “guilty” of the “distribution” charge in Count 2 , please indicate the quantity of methamphetamine mixture involved in the offense for which the defendant can be held responsible. (<i>Quantity of controlled substances is explained in Instruction No. 5.</i>)	
	<input type="checkbox"/> 50 grams or more <input type="checkbox"/> less than 50 grams	
COUNT 3: DISTRIBUTION		VERDICT
Step 1: Verdict	On the charge of “distribution of methamphetamine” on or about August 7, 2006, as charged in Count 3 of the Indictment and explained in Instruction No. 4, please mark your verdict.	<input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty
Step 2: Alternative	If you found the defendant guilty of this offense, do you find him guilty of “personally committing” the offense or “aiding and abetting” the offense?	
	<input type="checkbox"/> “personally committing” the offense	<input type="checkbox"/> “aiding and abetting” the offense
Step 3: Quantity of methamphetamine mixture	If you found the defendant “guilty” of the “distribution” charge in Count 3 , please indicate the quantity of methamphetamine mixture involved in the offense for which the defendant can be held responsible. (<i>Quantity of controlled substances is explained in Instruction No. 5.</i>)	
	<input type="checkbox"/> 50 grams or more <input type="checkbox"/> less than 50 grams	

COUNT 4: POSSESSION OF A FIREARM IN FURTHERANCE OF A DRUG-TRAFFICKING CRIME		VERDICT
Verdict	On the offense of “possession of a firearm in furtherance of a drug-trafficking crime,” as charged in Count 4 of the Indictment and explained in Instruction No. 6, please mark your verdict. <i>(Remember that if you found the defendant not guilty of the “conspiracy” offense charged in Count 1, then you cannot find him guilty of this “firearm” offense.)</i>	<input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty
<p align="center">CERTIFICATION</p> <p>By signing below, each juror certifies that consideration of the race, color, religious beliefs, national origin, or sex of the defendant was not involved in reaching his or her individual decision, and that the individual juror would have returned the same verdict for or against the defendant on the charged offense regardless of the race, color, religious beliefs, national origin, or sex of the defendant.</p>		

Date

_____	_____
Foreperson	Juror
_____	_____
Juror	Juror
_____	_____
Juror	Juror
_____	_____
Juror	Juror

Juror

Juror

Juror

Juror

II. EDUARDO TEJEDA-CADENA

As to defendant Eduardo Tejeda-Cadena, we, the Jury, unanimously find as follows:

COUNT 1: CONSPIRACY		VERDICT
Step 1: Verdict	On the “conspiracy” offense, as charged in Count 1 of the Indictment and explained in Instruction No. 3, please mark your verdict.	<input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty
Step 2: Quantity of methamphetamine mixture	<i>If you found the defendant “guilty” of the “drug conspiracy” charge in Count 1, please indicate the quantity of methamphetamine mixture involved in the offense for which the defendant can be held responsible. (Quantity of controlled substances is explained in Instruction No. 5.)</i>	
	<input type="checkbox"/> 500 grams or more <input type="checkbox"/> 50 grams or more, but less than 500 grams <input type="checkbox"/> less than 50 grams	
COUNT 2: DISTRIBUTION		VERDICT
Step 1: Verdict	On the charge of “distribution of methamphetamine” on or about August 17, 2006, as charged in Count 2 of the Indictment and explained in Instruction No. 4, please mark your verdict.	<input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty
Step 2: Alternative	<i>If you found the defendant guilty of this offense, do you find him guilty of “personally committing” the offense or “aiding and abetting” the offense?</i>	
	<input type="checkbox"/> “personally committing” the offense	<input type="checkbox"/> “aiding and abetting” the offense
Step 3: Quantity of methamphetamine mixture	<i>If you found the defendant “guilty” of the “distribution” charge in Count 2, please indicate the quantity of methamphetamine mixture involved in the offense for which the defendant can be held responsible. (Quantity of controlled substances is explained in Instruction No. 5.)</i>	
	<input type="checkbox"/> 50 grams or more <input type="checkbox"/> less than 50 grams	

COUNT 3: DISTRIBUTION		VERDICT
Step 1: Verdict	On the charge of “distribution of methamphetamine” on or about August 7, 2006, as charged in Count 3 of the Indictment and explained in Instruction No. 4, please mark your verdict.	<input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty
Step 2: Alternative	If you found the defendant guilty of this offense, do you find him guilty of “personally committing” the offense or “aiding and abetting” the offense?	
	<input type="checkbox"/> “personally committing” the offense	<input type="checkbox"/> “aiding and abetting” the offense
Step 3: Quantity of methamphetamine mixture	If you found the defendant “guilty” of the “distribution” charge in Count 3 , please indicate the quantity of methamphetamine mixture involved in the offense for which the defendant can be held responsible. (<i>Quantity of controlled substances is explained in Instruction No. 5.</i>)	
	<input type="checkbox"/> 50 grams or more <input type="checkbox"/> less than 50 grams	
CERTIFICATION		
By signing below, each juror certifies that consideration of the race, color, religious beliefs, national origin, or sex of the defendant was not involved in reaching his or her individual decision, and that the individual juror would have returned the same verdict for or against the defendant on the charged offense regardless of the race, color, religious beliefs, national origin, or sex of the defendant.		

Date

Foreperson

Juror

Juror

Juror

Juror

Juror

Juror

Juror

Juror

Juror

Juror

Juror